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[2006] 6 MLJ i

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Abandoned Housing Projects In Malaysia: A Legal Perspective

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Housing industry is one of the important agendas in Malaysia since Independence Day. Since then, it has been placed in the list of the top government's priorities in the Malaysian Plans. After Independence, one of the most important objectives of the government is to restructure the society and eradicate poverty, through the means of the various Malaysia Plans, the pre-emptive New Economic Policy (NEP) and the National Development Policy (NDP) adopted by the government. One of the approaches contained in these programmes and means, is to provide sufficient and suitable housing accommodation to its citizens. Initially, after Independence, the duty to provide housings for the citizens of Malaya (the then Malaysia) was resumed by the Malaysian government itself, following the step of the British-led government before it. However, due to the insufficient funds on part of the government and there were upsurges in demand for housing democracy and ownership, this noble task was too, been given to private developers, for them to provide and construct housing accommodation, subject to the rules and regulations imposed by the government. Be that as it may, although housing industry has served as the development, economic and social catalyst and has brought many benefits to the nation, yet, one of the spill-over problems which it carries, is the problem of abandoned housing projects. This problem has become a nightmare to the government and especially to the purchasers involved. Based on initial researches there are various kinds of reasons leading to such a catastrophe. It is thought that, legally speaking, this problem might have been and it is evident, due to certain legal problems. Thus, on this footing, this paper, will look into the legal provisions available that have the direct linkages with abandoned housing projects and will identify the related legal problems. Following this, the author will suggest certain legal approaches to overcome and avoid these problems from recurring in the future as well as the legal approaches to ensure the success of any rehabilitations.

6 MLJ i at ii

Introduction

In Malaysia, there are two types of housing projects. Firstly, projects that are constructed by the government towards providing residential or office premises to its servants and administrators. Second, is the private housing project spearheaded by four types of parties, namely:

- (1)a cooperative society¹;
- (2)special low cost housing projects undertaken by private parties;
- (3)private individual and private group housing carried by people at large; and
- (4)the licensed private developers².

Previously, only the licensed private developers³ are subject to the Housing Developers (Control and

Licensing) Act 1966 (Act 118). However, after the new amendment made in 2002, all of the above parties are subject to the purview of Act 118 (currently is being renamed 'Housing Development (Control and Licensing) Act 1966 (Act 118)). This means that all housing developments commenced and carried out by the above four parties after the amendment are subjected to the provisions provided in Act 118.

Licensed private developers are the major contributors in providing office, industrial and residential buildings to fulfill the demand of all layers of society in Malaysia⁴. All the activities of housing development carried out by

6 MLJ i at iii

licensed private developers are now governed by the Housing Development (Control and Licensing) Act 1966 and its regulations made thereunder⁵.

Even though, the housing industry has become one of the top priorities of the government, yet this industry, still causes possible spill over and recurring problems for the nation. One of the most plaguing enigma, is the

6 MLJ i at iv

sui generis abandoned housing projects. The causes are multifarious, but the most formidable reason is the economic recession, that has affected the whole nation⁶. Thus, this paper aims to look into this problem based on the legal perspective via the data and information generated and will attempt to forward legal suggestions to encounter the problem.

Objectives of the Paper

The objectives of this writing are:

- (1) to identify the legal causes of abandoned housing projects;
- (2) To suggest certain legal approaches to avoid any housing development from becoming abandoned in the future;
- (3) To focus on the rehabilitation of the abandoned housing projects in respect of their legal problems occurred and to suggest the most possible legal suggestions to ensure viability and the complete success of the rehabilitation plans.

The legal problems, in regard to this paper on abandoned housing projects, revolves around the below questions:

- (1) Why are abandoned housing projects still occurring even though there are laws, regulations and statutory provisions governing the housing industry?
- (2) How could law, rules, regulations and statutory provisions prevent and avoid this catastrophe from recurring in the future? And how to improve the law?
- (3) In case the abandoned projects are to be rehabilitated, how could then law, rules, regulations and statutory provisions play their parts to facilitate and protect rights and interests of parties involved? If the available law is not enough or if there is none, how could the laws be improvised or improved or new legal ideas and solutions be forwarded to give appropriate and sufficient protections and remedies to the parties involved?

This paper is to unveil the above matters relating to the phenomena of abandoned housing projects. Once the causes as well as the legal problems, which might occasion the abandonment, are identified, the solution can then be readily identified so that the risk of housing projects getting abandoned, can be eradicated or at least can be minimized, to an acceptable level.

6 MLJ i at v

Abandoned Housing Project -- The Problem

Hitherto, ironically there is yet, any official, legal or judicial definition on the meaning of 'abandoned housing

project'⁷. Neither is there any legal literatures and researches, except by the author, as far as the situations in Peninsular Malaysia is concerned, have been seriously undertaken to study the problem⁸. Be that as it may, the practical definition, for the purpose of facilitation and administration, has been given by the Ministry of Housing and Local Government ('MOH') and is defined as follows:⁹

(1)Construction and development works on site of the project that has been terminated for the preceding six months or more. Such termination has either occurred consecutively or occurred during the

6 MLJ i at vi

period within which the project must be completed or beyond the required completion period. Completion period means the period within which the developer has to complete the construction of the housing units. For the landed property, the completion period is 24 months calculated from the date of the sale and purchase agreement being executed, whilst for flats the completion period is 36 months from the date of the execution of the sale and purchase agreement; or,

(2)Within the said duration of 6 months, the developers concerned had been wound up and has been put under the control of the Official Receiver¹⁰ and,

(3)The housing controller is of the opinion that a particular housing developer fails to carry out their obligation as a developer.

According to the latest report from the Ministry of Housing and Local Government ('MOH'), until December 2004, there were about 227 projects throughout Peninsular Malaysia¹¹ that have been identified as abandoned housing projects. These problems involved 75,356 housing units, 50,813 purchasers and with a value of more than RM 7 billion¹². Most of the projects occurred in Selangor with 55 projects, followed by Penang (24 projects) and Negeri Sembilan (22 projects) etc. The state which has the least abandoned projects is Perlis with 3 projects¹³. These projects can be categorized into the following categories¹⁴:

- (a)projects which have the prospect for rehabilitation;
- (b)projects which are taken over by other developers;
- (c)projects which are not suitable for rehabilitation; and
- (d)completed and rehabilitated projects.

6 MLJ i at vii

This substantial figure is a cause of concern to the general public who may loose confidence in housing developers, in particular those who were or are already be the victims. There is also the 'formidable problems' of what to do with the abandoned projects: Can these abandoned projects expediently be revived. If so, how soon and how much will they additionally cost?

The consequences of abandoned housing projects are many. Some of them are, first, on part of the purchasers, they surely are unable to occupy the houses on time as promised by the developers in the Sale and Purchase agreement¹⁵. The constructions of the houses are terminated and partly completed resulting them to be useless for occupation for a long duration of time (mostly), unless they could, expeditiously be revived¹⁶. Apart from the inability to occupy the houses, the purchasers too have to pay monthly installments to their banks¹⁷. This is pathetic as the purchasers have to part with their monies but they could not get the houses. There are not uncommon cases, where banks had made the purchasers bankrupt on the ground that they failed to pay monthly installments.

Further to aggravate and worsen the situation, in the event there are plans for rehabilitation, the plans and attempts to rehabilitate are not easy. Many impending problems and difficulties, subtle nor obvious, would be awaiting the purchasers and the developers. Among the traumatic problems are the impossibility to revive the projects as the projects have been too long overdue without any prospects of reviving and to rehabilitate them, needing additional and substantial costs and expenditure¹⁸. Cases show that most of the purchasers are reluctant to take additional money out from their own pocket on the ground, 'that it was not their fault', as the 'fault was squarely due to the developers'. Thus, the developers concerned should advance their own

money to revive the projects'. Matters would not be settled that easy since most of the developers involved do not have enough money, which may be due to poor management or they had calculatedly siphoning off the company's asset and monies through unreasonable directors' allowances and high overhead operating costs. Worst still and of all, most of them have been wound up and the directors have absconded, unable to be traced and contacted¹⁹.

6 MLJ i at viii

Another problem that has been identified is the disagreement prevailing among the purchasers, bankers, local authorities and the contractors concerned when it comes to the reviving of abandoned housing projects²⁰. This problem is complex as is evident in many cases. Consequently, the projects could or may not be rehabilitated as there is no common consensus among them²¹.

Based on researches undertaken, even though there are legislation that cater for housing development in Malaysia, yet record shows that, this phenomena keeps on recurring especially so during the economic downturn. This is understandable, as in the economic recession, banks would be reluctant to grant housing loans as they are many bankrupts in the country, the slow business coupled with high gearing ratio of borrowing and less generating profits by banks, traders and business entities. Further, there are many unemployed people or dismissal cases, all of which, resulting in social and economic malaise and chaos in the country²².

It is also found that among other causes are that, the Ministry of Housing and Local Government and Local Government Departments and Agencies ('MOH'), had failed to strictly monitor the terms of the statutory provision provided²³. This is evident in certain studies that show, the legal provisions and requirement as stipulated by, for example, the Housing Development (Licensing and Control) Act 1966 (Act 118) and its regulations, are blatantly disregarded by developers without any punishment being meted out to and legal action taken by the authorities against them²⁴. Apart from insufficient legal and statutory provisions and legislations and specifically, due partly to enforcement weaknesses, the projects are prone or inevitably abandoned and yet the real culprits (defaulting developers) easily escaped from further liability and responsibility. It can be said, not exaggeratedly, that

6 MLJ i at ix

the ultimate victims will be the purchasers themselves. It follows that from the above phenomena, the miserably unfortunate fates faced by the purchasers in any abandoned housing projects, could strike a chord with those who really understand their plights.

Reasons Leading To The Abandonment

Based on available research and readings, it is found that relatively, some of the grounds that have led to such a catastrophe in the housing industry are due to the mismanagement (reckless or calculated) of the developer's affairs (especially financial), extravagant dissipation of purchasers' funds and projects that had been undertaken by unqualified developers. Notwithstanding that most of the research made are not based on legal views and perspectives (as there is a very few as far as the library of law and legal literatures on abandoned housing projects in Malaysia is concerned), yet it is submitted and opined that the finding of these research (other than law and legal research) would to a certain extent help us to understand better and give some constructive and enriching insights on abandoned housing projects, particularly as to their causes. According to researches made (Rodziah Idris²⁵, Che Ani Muhamad²⁶, Abdul Halim Sallehuddin²⁷, Nik Maisarah Nik Omar²⁸,

6 MLJ i at x

Noor Azhar Mohd Asha'ari²⁹, Suhaimi Mohd³⁰ Zulfakar Rahmat³¹, Nuarrual Hilal Md. Dahlan³² and Mohd Hamizan Nasir³³) amongst the causes are:

(1) Legal problems and lacuna, which warrant abandonment of the projects.

(2) Financial problems faced by the developers. The cause of this problem is due to the developer's own financial mismanagement, lacking of experience and skills in handling projects, showing irresponsibility and some have even absconded after realizing that they could not complete the projects;

(3) Loose approval of the applications for license by the MOH. The MOH has failed to obtain requisite advices from economists, legal experts, property experts and other experts in approving the applications;

(4) The embedding and permeating illegal squatters' problems faced by the developers and this would include the formidable challenges and problems caused to the detriment of the developers concerned in getting rid them of from the site of projects;

(5) Ongoing conflicts, feuds and squabbles caused between and among the developers, land proprietors, purchasers, contractors, consultants and financiers ensuing further difficulty to coordinate and streamline the development and construction activities.

6 MLJ i at xi

On the other hand, based on the regular observations by the Ministry of Housing and Local Government ('MOH'), there are about seven identified causes of abandonment of the projects. These factors are the weakness of and problems faced by the developers in respect of³⁴:

- (a) finance;
- (b) administration and management of the developers;
- (c) insufficient technical expertise on part of the developers, warranting the abandonment of the projects;
- (d) contractors;
- (e) land owners;
- (f) illegal squatters; and,
- (g) marketing and sales.

The Legal Problems

Some of the legal problems and events that thought to have and may have caused housing projects abandoned, can be divided into these stages:

- (a) Stage One (1): Before the developers obtained license from the MOH, viz during the application to sub-divide land and the application for obtaining planning permission;
- (b) Stage Two (2): During the course of construction and development of the projects;
- (c) Stage Three (3): After the projects abandoned and ready for rehabilitation; and,
- (d) Stage Four (4): The purchasers obtained vacant possession of the houses complete with the Certificate of Fitness for Occupation (CF) and entitled to occupy them

Stage One (1): Before the developers obtained license from the MOH, viz during the application to sub-divide land and the application for obtaining planning permission

Under this stage, legal problem may occur when the developer applies sub-division of land or changes the status of land. The application to sub-divide and change the land's status are respectively provided in ss 135, 137, 124A

6 MLJ i at xii

and 124³⁵ of the National Land Code 1965 ('NLC'). The problem that may arise from this stage includes fraudulent practices by the developer. It is thought this ill practice may happen, because there is no concrete and practical law which can trace and curb this peripheral problem associating with the sub-division of land³⁶. This can be articulated as follows, normally when the developer applied for sub-division of land, the result of the application of sub-division of land can take years. So, if the developer concerned wishes to

proceed expeditiously with the sale, construction and development of the projects, they need to have license and permit to advertise and sell from the MOH. This application can be done and granted even though the finality of the application of the sub-division is still pending. What is required by the MOH is that, the application for sub-division to the land authorities has already been lodged. That is all. The developers are allowed, by the MOH, to attach the application for license, only with the copy of the pending for approval application for sub-division of land³⁷. Once, they have been granted the license and permit, they can sell the pending and ad hoc sub-divided land/plot to purchasers. However, the problem may arise, when the developer, dishonestly, sells the same portion of that particular ad hoc and still pending sub-divided land/plot to other purchaser or they may charge that ad hoc and interim sub-divided portion/land to banks for getting loans. This is possible, because, provided that that particular ad hoc sub-divided land has been forthwith caveated by the first purchasers concerned, the sub-divided land, though having been sold to the first purchasers, yet their titles and rights over that ad hoc sub-divided land as beneficial proprietor, are still not indefeasible because their title and right over that sub-divided land have not

6 MLJ i at xiii

yet been finalized, registered nor have the final title been issued by the land authorities. The developer could later, change the application for the sub-division of land with new application and erase the earlier application which the first purchaser had the interest, thereby eliminating the proof of sale of such particular lot to the first purchaser. In this event, the first purchasers may be considered as being defrauded and suffered substantial pecuniary losses. Thus, this ill practice, it is submitted, has posed certain lacuna and loopholes that warrant it to be redressed by way of incorporating new legal and statutory rules, not just based on equitable and contractual principles, to protect the first purchaser and bona fide parties for value³⁸. The above legal fraud may also occur in the sale of sub-divided lots under qualified titles and flats/apartments, normally involves the application for final title and strata title, it is submitted³⁹.

6 MLJ i at xiv

In this respect, usually the developer and the purchasers will execute, apart from sale and purchase agreement, the deed of assignment⁴⁰ to evidence the beneficial ownership on the sub-divided

6 MLJ i at xv

lot/prospective parcels and to secure loans from bank. The purpose of effecting the deed of assignment is to enable the purchaser to assign the sub-divided lot/parcel so purchased to bank as evidence of ownership pending the issuance of separate final title/strata title to the said sub-divided lot/parcel and allowing the bank (as lender/chargee) to charge the sub-divided lot/parcel as collateral against the loans so advanced to the purchasers(borrowers/chargors) to buy the said sub-divided lot/parcel. However, later the developer, cunningly and misleadingly, could dishonestly, sell the same sub-divided/parcel to other new purchasers and extinguish the first purchaser's sale and purchase agreement and deed of assignment thereby eliminating the first purchaser's evidence of sale and his beneficial ownership over that particular sub-divided lot/parcel. The sale of sub-divided lots under qualified title and flats and apartment, through the deed of assignment, is not governed by the National Land Code 1965 ('NLC'). Instead, it is subject to ordinary law of contract and equitable principles. This legal loophole likewise needs to be addressed.

In some respect, as regards the local and planning authorities who are responsible in issuing the planning permission (Kebenaran Untuk Merancang), their practice in certain circumstances may too have caused unwarranted difficulties to the developers concerned. For example, they may impose certain conditions, at their whims and fancies, at the very last minute nearing the completion of the project or in the mid-stream of the development, as the condition precedent to the issuance of Certificate of Fitness (CF), whereas these conditions may have not been stipulated earlier for immediate action and due notice of the developers. Taman Padang Tembak, Lot No 688, TS 2, Mukim 16, NED, Penang is an example, where the local planning authorities had imposed unwarranted condition.⁴¹ This happened, because the local planning authorities had amended the approval of certain plans made earlier right in the course of construction of the housing units. This would certainly, cause a lot of difficulties and trouble, wasting time and money of the developers⁴².

In respect of comment and approval from certain technical agencies, before the Certificate of Fitness For Occupation (CF) and the planning permission can be issued, certain legal problems might also occur. These technical agencies include, Department of Town and Country Planning, Public Work Department (JKR), Department of Water and Irrigation, Tenaga Nasional Berhad (TNB), TELEKOM Malaysia, State Water Authority, Land and District Administrator, Fire Department, Department of Sewerage Services, Department

of Education, Department of Environment etc. These technical agencies and their requirements and conditions imposed, if it is submitted, need to be standardized and

6 MLJ i at xvi

incorporated into the statutory provisions, for otherwise, due to their inconsistencies and non standardized practices, they may also potentially result in the abandonment of the project⁴³. This can be illustrated for example in Taman Cemerlang, Lot Number 3254, Lebuhraya Thean Teik, Bandar Air Itam, Pulau Pinang⁴⁴, where TNB had required the developer to provide an area of land of two acres for the purpose of erection of sub-power station by TNB. Due to this new requirement, the developer had to incur additional costs. However, this requirement had not been stipulated earlier. Yet, because, the developer did not want to have further problem with the authorities, they, by hook and by crook, managed to provide the land after purchasing it from the neighbouring land owner, at a very substantial price for the purpose of erecting the sub-power station on it, complying with the direction of the TNB. However, after the provision of this requirement had been met, TNB aborted the direction. This had costed, the developer, substantial expenditure and wasting time of the developer and resulted in the abandonment of the project.

In respect of the issuance of CF, certain other new agency, apart from the current list, also should not be undermined of their importance. For such matter, they need to be included in the list of such technical agencies, if it is expedient to do so. For instance the Department of Geology, which will be responsible to look into the land, location and geography of the project sites to confirm that the land and the site of the project are, geographically and physically, fit and suitable for development within certain projected cost of development. This is to avoid future land erosion, land slide and hinder any further cost and work to extract hidden rocks and unwarranted soil structures which if not properly addressed may lead to abandonment of the projects. This is evident in Taman Villa Fettes, Lot 141 dan 3622, Mukim 18, North East District, Penang, where it was found that the project had to be abandoned because the developer had incurred substantial expenditure to extract and remove hidden hard rock in the soil of the project sites⁴⁵. This additional costs and problem were unforeseen items and not within the developer earlier anticipation.

The practice and conditions for the CF's grant vary from one state to another in Malaysia. Even though there are circulars or guidelines issued by the MOH for due implementation by the local and planning authorities for the purpose of coordinating and standardizing the requirement for the issuance of CF, yet, there are cases, where the circulars have been blatantly disregarded by these authorities. This turpitude policy may be so, as the circulars do not have legal forces and these authorities have their own by-laws and are not subjected to the jurisdiction and power of the MOH.

6 MLJ i at xvii

Some of the cumbersome financial charges and fees imposed by the local planning authorities and technical agencies (such as Department of Irrigation, Surveyor Council (Lembaga Juru Ukur Malaysia and Water Authority such as PUAS) also may have caused financial hardship and substantial costs for the developer which could contribute and result in the abandonment⁴⁶. For example, a housing project of seven acres in Setapak, Kuala Lumpur had been approved to build 800 units of medium cost houses. However, the approval was subject to development charges amounted to RM3.7 million to Dewan Bandaraya, Kuala Lumpur (DBKL). While the land cost is RM12 million. This means, the said developer had to incur nearly RM16 millions (RM3.7 million plus RM12 millions) before the sale could be carried on and the developer could get certain proceeds⁴⁷. Rules that impose burdensome fees need to be revised to help the developers concerned and to avoid any financial difficulties on part of the developers which could result in the abandonment. It should also be noted that, the developers are not only to bare these costs but they also have to pay considerable professional fees to consultants such as architects, engineers, land surveyors, quantity surveyors and lawyers to effect the development⁴⁸.

It should also be noted that, in case the above predicaments were to occur, it may be argued that, the aggrieved party could appeal to the Appeal Board pursuant to s 36 of Town and Country Planning Act 1976 (Act 172). This appeal usually be resorted to, in the event there is dissatisfactory decision issued by the local planning authority to any applicants. Among the dissatisfactory decisions include, for example, the refusal of the local authority to grant planning permission and the imposition of onerous conditions on the applicant developer concerned. However, the problem to this is that not all states in Malaysia do have such a board⁴⁹. Only Federal Territory, Selangor and Penang comply with this statutory requirement⁵⁰. Even of these three

states, it is only Penang which has an active Appeal Board⁵¹. In Selangor and Federal Territory there are Appeal Boards established, yet, there are not much information available⁵². Secondly, this appeal process and procedures are at the expense and is of time consuming coupled with uncertainty of its final outcome, on part of the developers,

6 MLJ i at xviii

which ultimately could be adverse to their project undertaken before hand. In addition thereto, this may cause further 'chaos' and could cause 'prejudicial' effects to their overall projects especially so, when it comes to the obtaining of the final CF, from the same authority, to warrant the obtaining of vacant possession and due completion of the projects.

In another problem, it is also found that one of the reasons that has caused the projects to be abandoned is the lack and insufficiency of purchasers. For example, let say the plan of the project is to build 100 units of housing but finally only five purchasers that have turned up and signified their intention to purchase the units. This problem is evident in Taman Yew Lean, Lot Number 664, Section 2, North East District, Penang⁵³ and Taman Julita, Bukit Air Itam, NED, Penang⁵⁴, where only a few purchasers were interested to buy the housing units.

On other occasions, abandoned housing projects might have been caused due to the problem of illegal squatters who refused to leave the project sites. These illegal squatters might have resided at the site of the projects for years. Illegal squatters has indeed become one of the stumbling problems to the developers, if it is not addressed earliest possible. This can be seen in Taman Yew Lean, Lot Number 664, Section 2, North East District, Penang⁵⁵, Taman Han Chiang, Lot Number 2343 PB6, North East District, Penang⁵⁶ and Taman Padang Tembak, Lot No 688, T.S 2, Mukim 16, NED, Penang⁵⁷.

Concerning the practice of collecting deposits or what is sometimes called 'earnest money' from the purchasers, this practice could also pose certain legal problems. This problem may occur, when the developer collects them even before the grant of planning permission, license and permit to sell and advertise, have been issued by the local planning authorities and the MOH. The purpose of the practice is generally to secure at earliest and as many as possible, a pool of prospective purchasers and create interim capital to generate money via fixed deposits or other investment means, pending the approval of the application for planning permission and license, and once these are fruitful the developers can thus expedite the construction of the buildings and gain some profits. However, in case the approval and the license could not be granted and the developer absconds to avoid the purchasers, with all the deposits and their profits, the purchasers could be left without any remedy. Such problem happened in Taman Universe, Lot 1556, Mukim 13, NED, Penang, where 62 purchasers who had paid deposits had

6 MLJ i at xix

been defrauded and the project was abandoned because the developer failed to get approval from the local planning authorities and MOH and the directors ran away to overseas⁵⁸.

Stage Two (2): During the course of construction and development of the projects

It is evident that, one feature of an abandoned housing developer is its inherent financial problem. For example, it has incurred losses prior to the application for licenses, has negative Return of Capital Employed (ROCE)⁵⁹, negative Net Profit Margin (NPM)⁶⁰ and High Gearing Ratio⁶¹. This means that, the developers concerned did not have financial strength albeit license and permit to develop and sell housing units having been granted. Based on the reading of the Housing Development (Control and Licensing) Act 1966 provisions, none has specifically stipulated that the financial position and business record of the developers concerned must be viable and sufficiently convincing before their applications for licenses can be granted by the Housing Controller. This problem happened to Eastern Enterprise Sdn. Bhd (developer for Taman Suria Mutiara, Jelutong, Penang)⁶², Gewaris Sdn. Bhd (Taman Villa Fettes, Tanjong To'kong, Penang)⁶³, Shaukat Industry & Realty Sdn. Bhd (Taman Shaukat)⁶⁴, Yew Lean Development Sdn. Bhd (Taman Yew Lean)⁶⁵ and City and Country Development Sdn. Bhd. (Taman Hamilton, Jelutong, Penang)⁶⁶.

6 MLJ i at xx

Secondly, in respect of the right of the developer to withdraw the funds from the end-financier at each progress development supported by the architect certificates verifying the completion of certain stage of

development, as entrenched in rule 7 of the Housing Development (Housing Development Account) 1991 and s 7A of the Housing Development Act 1966, it is also argued that, this provision can also be abused by the developers. This is so, because there are cases where although architects or engineers have signified and evidenced the completion of certain progress development, however this had not been done honestly.⁶⁷ In other words, there are fraudulent practices by developer, architects, engineers and bank managers to withdraw the available money in the end financier's hands at the expense of the purchasers. So far, there is no current legal provision that can prevent this malpractice, pro-actively and pre-emptively, except when the legal and equitable remedies could be expeditiously granted to the aggrieved parties upon application subject to the availability of the evidence and that the culprits and their assets and money still available and frozen pending the determination of the suit.⁶⁸ The latter remedy though available, yet, this may not be sufficient as this resort could normally, due to the procedural tussle and time consuming in court, take some time to be fruitful, and when the order, judgment and decree favourable to the aggrieved parties are made, the culprit developers and their professional aides might have run away (may be oversea, where service out of jurisdiction could pose certain problems and time consuming and the possibility of tracing and locating them) and the worst still, leaving no monetary provisions to meet the losses suffered by the aggrieved parties.

Apart from the legal loopholes mentioned above, it is also succinctly found, that there are also weaknesses on the part of the MOH to fully implementing the provisions contained in Act 118. In other words, there are enforcement and implementation weaknesses on part of the MOH. These may include the failure to charge defaulting developers with criminal offences and to black list abandoned housing developers. Among the developers' non-compliance of duties that have been evident in abandoned housing projects saga are, for e.g. failure to comply with s 7 (duties of housing developers)⁶⁹,

6 MLJ i at xxi

s 8 (Disclosure of the arrangement and reorganization)⁷⁰, s 9 (duty to appoint auditors)⁷¹ etc. Though these transgressions have occurred, yet, based on the preliminary study, no punishment has been meted out to these defaulting developers.

There is also a situation where, when the time to rehabilitate comes, and upon study by consultants to look into the viability and suitability of the project for rehabilitation, there are insufficient funds available in the hands of the end-financier. In other words, this happened due to increasing construction costs and the fact that the physical states of the houses, have long been overdue for completion and has been abandoned, the houses might also have been damaged and need substantial repairs and replacement in order to get the CF. In this situation who will inject the additional funds? Based on the preliminary study, the researcher finds that either, this additional fund comes from the developer themselves⁷² or the purchasers are willing to part with additional money⁷³ or the additional fund comes from some 'welfare' contribution by government agency for instance Tabung Pemulihan Perumahan Terbengkalai (TPPT) of Bank Negara⁷⁴. However, it is opined that it is fair and equitable to impose this obligation on the defaulting developer themselves. However, say that the defaulting developer has no money at all, how could we settle the matter?

Stage Three (3) After the projects are abandoned and ready for rehabilitation

The first legal hurdle for one who wishes to study and for those involved in any abandoned housing project, it is submitted, is the 'legal and true definition and meaning of abandoned housing projects itself'⁷⁵. To exacerbate the matter, neither is there any definition found in the statutes nor in any reported case law⁷⁶. In other words, there is no legal definition of abandoned

6 MLJ i at xxii

housing projects. What is available is the meaning and definition given by the MOH for their administrative purposes as mentioned hereinbefore. However, as this is not a legal definition, it can be abused by the developers concerned. For example, the developer is obligated to complete the construction of the projects within the statutory period of 24⁷⁷ or 36⁷⁸ months. Based on this obligation, they shall not delay construction activities beyond this period. Otherwise, they have to pay damages.⁷⁹ However, there are cases where, the developers had delayed the construction. This phenomenon, may be due to their mismanagement, siphoning of funds and other mala fide hidden agendas to the detriment of the purchasers' interests. However, as there is no legal definition of abandoned housing projects, (although the MOF, inter alia, states that, if there is no construction activity within 6 or more months, the project would be considered abandoned) yet, the

developers concerned, may rebut that, as the time period for them to complete the houses is still available and outstanding, i.e. the period of 24 or 36 months are still remaining, the MOH shall not have any legal standing or locus to take any action or interfere with their business. Let alone to declare the projects abandoned. Further more, they may emphasize that, even if they could not complete the construction within the statutory period, the MOH has no legal right to take action against them, as they have agreed and undertook to pay the statutory damages for late deliveries of vacant

6 MLJ i at xxiii

possession to the purchasers.⁸⁰ This is the legal predicament. The associating effects arising from this legal problem is that, it would cause difficulties for the MOH or rehabilitating agencies to take over or go into the project for revival soonest possible to avoid further problems, unless this problem has been admitted by the developers concerned and they surrendered the projects to the MOH to resume the construction⁸¹. The problem may also postulate further 'headache' in that, dispute and tussle may ensue between purchasers, local authorities, end financiers and the developers concerned⁸². This dispute could to a certain extent, lead to litigation.⁸³ If this were to happen, this would certainly prolong the plan for rehabilitation to an indefinite period of time. Yet the rehabilitation of the project remains stalled. Due to the long delay, to rehabilitate, the materials and physical states of the uncompleted building could have been damaged, becomes unsuitable for human habitation/occupation and the increasing costs and expenses needed to repair and replace them will increase⁸⁴. The question is: who will be responsible to inject the additional funds? Unless the purchasers themselves agree to top-up the insufficient funds for example as happened in Taman Showkat, Lot 2219, Mukim 13, NED, Penang (Showkat Industry and Realty Sdn. Bhd)⁸⁵ or in case there is financial help from somebody (for eg government and Tabung Pemulihan Perumahan Terbengkalai (TPPT) Bank Negara) like Tingkat Nusantara, Lot 300 & 302, NED, Penang (Syarikat Nusantara Pulau Pinang Berhad)⁸⁶, the rehabilitation cannot be proceeded with and caused adverse effects on the interest of the purchasers. The latter scenario occurred for example in Taman Bistari, Kamunting, Perak (Sri Ringgit Sdn. Bhd)⁸⁷, where the purchasers were reluctant to provide new funds from their own pockets, the project remains stalled, since abandoned in 1987. However, this project had been finally rehabilitated in the early 2000s by the Syarikat Perumahan

6 MLJ i at xxiv

Negara Berhad (SPN) -- being a government rehabilitating agency⁸⁸. Thus, it is submitted, it is necessary and timely to have a new legal and statutory definition and legal and statutory rehabilitation regime to avoid these legal problems.

Stage Four (4): The purchasers obtained vacant possession and entitled to occupy the housing units

There are also cases, after rehabilitation had been successfully undertaken, the purchasers echoed dissatisfactory remarks about the shoddiness end result of the new developers' work and their workmanship. For example, in Taman Julita, Bukit Air Itam, an abandoned housing project situated at P.T Lots 4910-1916, Mukim 13, NED, Penang (Malaysian Resources Corporation Sdn. Bhd.), where it was found that the developer responsible to revive the project failed to comply with the original layout plan and specifications of the building as contained in the sale and purchase agreement and the planning permission⁸⁹. Thus law is needed to curb this malpractice of the rehabilitating developers.

Suggestions

Based on the above illustration, it is suggested that the following legal suggestions be adopted by the government to counter the above legal problems⁹⁰:

6 MLJ i at xxv

Stage One (1): Before the developers obtained license from the MOH, viz during application to subdivide land and the application for obtaining planning permission

To avoid fraudulent practices by developer in selling the same land to several persons, it is suggested that, the related legal provisions must state, once they (the developer) had filed the application for sub-division, the said application shall be irrevocable. It can not any more be changed except on the ground of equity. This is to protect the interest of the purchasers from being defrauded by the developer as illustrated above. This additional legal requirement also serves as a supplement to the requirement that the sale land

concerned be caveated forthwith.

As far as the local planning authorities are concerned, on the problems of non-coordination and non-standardized procedures and the issue of non-legal locus circulars and guidelines in imposing the conditions precedent prior to obtaining the planning permission from the local planning authorities and the Certificate of Fitness for Occupation (CF), it is suggested that, new law and regulation have be to passed in order to streamline and standardize them. This means, once the planning permission has been issued with certain conditions being attached to it, the conditions shall, thereafter become irrevocable. Thus, by having such a certitude of the conditions, the developers can carry out their housing development without any fear that variations may later be made, which differ from their earlier the earlier permission and conditions.

Similarly in respect of the problem of having insufficient purchasers, it is suggested that, the developers who intend to apply for the planning permission must provide convincing proof that there are enough purchasers, which can warrant complete sales of the intended housing units, as one of the factors which is to be considered by the local planning authorities before planning permission can be granted. It is suggested that to obtain these prospective purchasers, certain avenue can be sought for example, for the low cost housing units, the developers can get the list of potential purchasers, from the State Secretary office (Pejabat Setiausaha Kerajaan Negeri). On the other hand, to get prospective purchasers for the remaining non-low-cost houses (medium or high-class houses), it is suggested that, new rules need to be adopted, by the government. This can be done, for example, by imposing obligation on residents living within the area of jurisdiction and power of the local authorities to register their names to purchase houses. Thus, by having these banks of prospective purchasers, it is hoped that the problem of lacking of sufficient purchasers would be eliminated.

Finally, On the problem of illegal squatters who have hesitantly refused to vacate the sites of the project, despite requests to so do have been served on them, it is suggested that, developers concerned shall first, get rid these illegal squatters of, by what ever means necessary and expedient, before they take off any projects. In this respect, it is therefore necessary, to pass new law

6 MLJ i at xxvi

which requires developers to settle the problem of illegal squatters first, or otherwise, planning permission shall not be granted. It should be stressed that, any problems and encumbrances, potential and inherent in nature must be specified in the development proposal as that required to be submitted by Section 21A of the Town and Country Planning Act 1976(Act 172). These information (the potential and inherent problems) are important as the local planning authorities could identify earliest possible about these potential problems and could forthwith, order the said applicant developers to settle them at an earliest stage as possible before the intended development be carried out. It is also important, in order to ensure the veracity and the reliability of the information contained in the application for planning permission, as required by Act 172, Act 133 (Street, Drainage and Building Act and Uniform Building By-Laws) and others, the local planning authority, must also form their own internal auditors or independent, reliable and credible valuers and assessors to verify the information so contained in the development proposal and other related documents in order to avoid any discrepancies and fraud which may exist in the documents so submitted by the applicant developers. This requirement, it is suggested, must also be inserted into the relevant statutory provision as supplement to the existing one.

It is suggested that the existing provisions especially the Housing Development (Control and Licensing) Act 1966 (Act 118) should provide clearly the obligation on part of the applicant developer to prove and show that their financial positions are reasonable and viable to the satisfaction of the MOH. The MOH must also set certain minimum and acceptable standard of financial strengths that can be considered suitable or appropriate for developer to meet all and any financial challenges that they may encounter throughout the course of construction and development of the houses. The proof of this ability must also be consistently shown throughout the stages of the development.

In case, there are dishonest practices by the developers and the architects in withdrawing the fund from the financiers, it is suggested certain legal protection, are urgently needed to curb these ill practices. For instance, certain rules to prevent this problem from happening, can be implemented by way of incorporating

tighter procedures, such as the requirement to have purchasers' and MOH's own appointed architects and engineers, being independent professional parties, to verify each and every payment claim submitted by the developer to the end financiers before the funds in the end-financiers' hand can be released to the developer.

6 MLJ i at xxvii

In looking into the ineffectiveness and weaknesses on part of the MOH to monitor and supervise the conducts and activities of the developers, it is also suggested that, there should have additional provisions, which provide for the appointment of purchasers and any interested or affected parties in the development so carried out by the developers, as 'watch dog' or to certain extent as 'whistle blower', to look into and supervise the due and necessary compliance with these statutory duties on part of the developers concerned. By the so appointment, they may exercise the act of 'check and balance' against the conducts of the developers. Apart from this, the Local Authority, Local Planning Authorities and MOH as the regulatory bodies in housing development industry should also play their roles, in the nature of supervision and enforcement, in line with what have been provided for in the related statutory provisions. The provisions should also confer rights on the purchasers, in the event, there is unreasonable non-compliance behaviours against these statutory duties, on part of the developers, which may cause and bring potential and impending troubles, detrimental in nature, against the purchasers' interest, to apply for stop order of the development and request for the change of developer to avoid any further problem to the development and to avoid the housing project from becoming abandoned. In addition thereto, this statutory right, it is suggested, shall not and does not prevent any aggrieved purchasers concerned from instituting civil suits against the defaulting developers, the cause of actions of which are founded on the principles of equity, contract and torts laws. This is to give full power, opportunity, right and ability to the purchasers, and by all legal means, as the potential aggrieved parties to seek justice against the culprit defaulting developers.

As regards the liability and responsibility of the developer who had defaulted and caused the abandonment, it is opined that it is fair and equitable to impose on them the obligation and responsibility to fully fund the rehabilitation. However, what about if let say the developer does not have money at all, how could we settle this matter? In the opinion of the author, it is suggested that, in every planning permission issued by the local planning authorities and in each license and permit to sell housing units and to advertise housing development, to developer issued by the MOH, such permission, permit and license must provide certain conditions which state that, the developer shall reserve at least certain portion of the site of the project and the development area, for eg, 30% of them, be reserved as a security or a lien or a collateral land against the project so carried out. This condition, it is submitted, is to safeguard the interest of the purchasers, in case the project is later inevitably abandoned. In the event, the project becomes abandoned, and upon reports submitted by the consultants made after due investigation being carried out, if it were found that the funds, available in the hands of the end-financier, for rehabilitation are not enough, then this collateral/lien/security land can be used by way of selling it and the proceeds

6 MLJ i at xxviii

accruing thereon can be utilized to top-up the insufficient funds in order to provide the needed capital/fund for the rehabilitation purposes. After the project is fully rehabilitated, the CF has been granted and the defect liability period has expired, then, provided that, there is balance from the proceed money accrued from the sale of the security/lien/collateral land, and as far as it is equitable, this balance shall be refunded to the defaulting developer. For this purpose, it is suggested, a new provision must be inserted into the existing legal provisions, for example Act 118, to give effect to this suggestion.

Stage Three (3): After the projects have been abandoned and ready for rehabilitation

The definition of abandoned housing project must legally be provided for and statutorily be interpreted. It is suggested, the administrative definitions given in the above be used as the statutory and legal definition of abandoned housing projects. In addition thereto, the new law, if it were to be passed, must define when does actually abandonment occur? For example, abandonment may occur if certain stages and progress of the housing development and construction being carried out by the developer has been terminated or the developer fails to comply with the statutory duty to submit the progress reports to the MOH for certain durations of month. The purpose of formulating this legal and statutory definition of abandoned housing is to prevent any abuse of duty and power by the developer concerned as has been illustrated above. Further, by

having this official, statutory and legal definition, the rehabilitation of the abandoned projects could be expedited and this would facilitate the due completion of the project without more ado. It follows that once certain project is officially, statutorily and legally defined as an 'abandoned project', the MOH can forthwith, make official declaration and publish it in the gazette.⁹¹ Thus, the project so abandoned can immediately be vested in the MOH's control. Following this, a new supplementary rehabilitation legal regime is required to guide and control the process of rehabilitation. The laws and statutory provisions granting necessary powers to the MOH to take over the abandoned housing projects and to exercise necessary actions in order to rehabilitate them, will serve the MOH with formidable statutory vesting and moratorium

6 MLJ i at xxix

mechanisms against any interfering and unduly actions, either legal or non-legal, from recalcitrant parties which can jeopardize the whole rehabilitation processes. In summary, the suggested rehabilitation statutory provisions, it is submitted, must, at least, contain the following matters and sequences:

- (a) The MOH shall declare that certain housing project has been abandoned and publish it in the gazette, once the project falls into the official, statutory and legal definition of 'abandoned housing project'⁹².
- (b) Once the project has been so declared as abandoned housing project, the existing defaulting developer is no more responsible over the project.
- (c) Following this, the MOH shall appoint a new rehabilitating developer. The function of this new rehabilitating developer (may also akin to receiver and manager or special administrator or project manager entrusted by the MOH to rehabilitate the projects) is to rehabilitate, control, manage the whole project until completion based on the rehabilitation statutory legal provisions and procedures.
- (d) All securities, collaterals and deposits of the defaulting developer will be frozen and subject to the use of the new rehabilitating developer and MOH for the purpose of topping-up the funds for the revival of the project if it is necessary and expedient to do so.
- (e) The declaration, that such an housing project which has now become an abandoned housing project, shall also serve as a 'moratorium' or 'shield' against any unduly interfering action from any parties, for the purpose of facilitating and ensuring smooth running of the rehabilitation by the new rehabilitating developer and until the rehabilitating construction of the whole project has been duly completed .
- (f) All parties (purchasers, end-financiers, local planning authorities, State Authority, local authority etc) are under obligations to comply with these statutory provisions (the above and the below) and to give full support and cooperation to the MOH and the new rehabilitating developer for ensuring the due execution of the rehabilitation.

6 MLJ i at xxx

(g) The new developer shall make appointment of consultants consisting of accountants, architects, engineers and quantity surveyors to conduct feasibility and viability studies on the status quo of the abandoned project when it was been terminated. The objective of this study is to disclose the physical states of the building, the uncompleted units, the available funds, the costs and expenses needed to run the rehabilitation, etc.

(h) If the study finds that the funds, particularly the funds, which are still in the hands of the end-financiers, are not sufficient, the new rehabilitating developer, with the approval of the MOH, shall utilize the liens, securities, collaterals and deposits of the previous defaulting developer, by utilizing or realizing them and proceeds accrued thereof shall be used to top-up the insufficient existing funds.

(i) The consultants are required to prepare and submit the report of the viability and feasibility study within certain duration of time. This report must be submitted to the new rehabilitating developer and the MOH for their consideration and after necessary consideration has been exercised upon it and upon the approval of the MOH thereof, then could the proposal, be carried out forthwith.

(j) Once the MOH has approved the proposal as per the report or subject to certain modification if necessary, the MOH would forthwith declare that the rehabilitation shall be commenced.

(k) This new rehabilitating developer also has to give certain undertaking to the MOH and to comply with the rehabilitation statutory rules and regulations, in order to protect the interest of the purchasers and to ensure the complete success of the rehabilitation.

(l) The new developer shall also be subjected to the ordinary development and planning laws as ordinary developers do. Thus, they have to apply for the new planning permission, permission to make streets, back-lanes and resume erection of building and erect building, carrying out earthworks, fulfilling all conditions required for the issuance of Certificate of Fitness For Occupation (CF) and other matters related thereto from the local planning authorities and local authorities as required under Town and Country Planning Act 1976 (Act 172) and the regulations made thereunder, Street, Drainage and Building Act 1974 and Uniform Building By-law Act 1984. Similarly, they too shall have to apply for new license and permits for advertisement and sale from the MOH subject to the provision of the Housing Development (Control and Licensing) Act 1966 and the regulations made thereunder. These regulations are imperative, to ensure the legality of the rehabilitation projects and protect the rights and interests of parties involved.

6 MLJ i at xxxi

(m) New agreement of sale between the new developer and purchasers shall be effected based on the spirit and intention of the Housing Development (Control and Licensing) Act 1966 and the regulations made thereunder but with certain modification. The rehabilitation shall be completed within certain mandatory period as so stipulated by the MOH, dependent on the degree or severity of the problems and numbers of the uncompleted housing units and their stages of construction. This duration of time is based on the reports and findings obtained from the feasibility and viability studies conducted by the above consultants.

(n) The new rehabilitating developer will appoint contractors and the construction and rehabilitation will be carried out and completed within specified period as stipulated in the planning permission, permission to erect building etc and license from the local authorities, local planning authorities and the MOH.

(o) The rehabilitation shall commence until full completion and the Certificate of Fitness For Occupation ('CF') obtained, warranting the purchasers taking vacant possession of the houses.

(p) Once the overall construction of the project has been completed, as far as the proceeds receivable from the outstanding funds in the hands of the end-financiers and the balance of the proceeds accrued from the realization of the liens/collaterals/securities permit, and would legally and equitably be attributable to the previous defaulting developers, and provided that, after offsetting against the requisite fees, costs, expenses, expenditures, over-heads, professional charges, top-up-funds-to-generate-rehabilitation, incurred and rendered by the said rehabilitating developer and the compensation and damages payable to any aggrieved parties, and that the proceeds thereon are still remaining, then the proceeds balance thereof, as far as it is equitable and fair, be returned, to the previous defaulting developer.

It is submitted that, the above legal suggestions would able to achieve at least the following objectives:

(1) To avoid any problems and disputes which may arise from and caused by the recalcitrant purchasers, contractors, end-financiers, banks, local authorities, local planning authorities, state authorities, etc. This problem can be seen, for example, in Ria Kondominium, Bandar Kuah, Langkawi developed by PRJ (M) Sdn. Bhd., where all the attempted discussions, in order to rehabilitate the project so abandoned, between the purchasers, banks and developer failed⁹³.

6 MLJ i at xxxii

(2) Will expedite the rehabilitation of the projects within a specified and definite time period. Otherwise, without a systematic and concrete rehabilitation plans and law which can control it, the rehabilitation will be delayed and in worst situations, the rehabilitation could not be commenced. For example, where this kind of trouble occurred, is in Taman Seri Marina, Kuala Kedah, Kota Setar District developed by JB Kulim Development Sdn. Bhd. The reason leading to such a catastrophe is that the developer had been wound up by court on the application of the main contractor due to the default of the developer itself and exacerbating the problem, currently no party is willing to rehabilitate the project. The project remains stalled, until today without any positive and possible prospect, plan and initiative to revive it. It is noted that, this project should

have been completed by February 2001⁹⁴.

(3)The purchasers will be able to get the houses and their rights will be protected as these are provided and guaranteed by the rehabilitation statutory regime provisions. Further, the rehabilitating developers and its rehabilitation developments are subject to the close scrutiny of the MOH. It should be borne in mind that, the failure to have such a pre-emptive and pro-active rehabilitation statutory regime, various troubles could occur. For example, this can be illustrated in Taman Bunga Raya, Mukim Wang, Kangar developed by Bintong Dasari Sdn. Bhd, where without being properly supervised and monitored, the rehabilitation of it had been prolonged, much longer period than what it had been initially projected for, with various kinds of problems and difficulties faced by the rehabilitating developer, including the problem of recalcitrant contractors, purchasers, bankers and authorities. Fortunately, however, the revival of this project had, finally, been completed on 12 June 1998, after becoming abandoned since 1992⁹⁵.

(4)To avoid any abuse and misuse of duty, power, and authority, when the project is undergoing the process of rehabilitation, caused by consultants, contractors, receiver, managers and liquidators. The rampant abuse and misuse of duty, power and authority by these irresponsible parties, has become the current typical phenomena in the rehabilitation of abandoned housing projects in Peninsular Malaysia, much to the dismay and detriment of the purchasers. Taman Bistari Kamunting, Taiping, Perak developed by Sri Ringgit Properties Sdn. Bhd is the perfect example of this phenomenon. The problem with this project is that, the so-called rehabilitating contractors - Setia Laris Sdn. Bhd and Super City Triumph Sdn. Bhd failed to plan properly and

6 MLJ i at xxxiii

had transgressed certain rules and regulations, which all in all, subtle or obvious, this failure, had retarded the due progress of its rehabilitation. This project had been abandoned since the middle of 1980s but fortunately, however, with the injection of welfare funds and rehabilitation carried out by Syarikat Perumahan Negara (SPN) in early 2000s, the project is now fully rehabilitated and ready for occupation, after it had been abandoned for almost 20 years⁹⁶.

(5)To avoid any unwarranted and unnecessary disturbing actions such as legal actions commenced by dissatisfied parties. Without any such disturbing actions, it would certainly help the new rehabilitating developers or the previous defaulting developers in case they are agreeable and fit to resume the project, to smoothly carry out the rehabilitation. This problem, can be illustrated in Taman Perpaduan Permai, Bercham Ipoh developed by Trinity Home Builders Sdn. Bhd, where in this case, the project should have been completed by year 1999, however until now no rehabilitation has been undertaken. To worsen the matter, 18 purchasers have filed writ of summons against the defaulting developer praying for specific performance, damages and other equitable remedies against the defaulting developer⁹⁷.

(6)To avoid any abandoned housing projects from being stalled for indefinite period of time, without any positive and prospective rehabilitation plans and development. This scenario can be illustrated in Taman Sri Intan, Besut, Terengganu, developed by Tenaga Wan Bersaudara Sdn. Bhd. This project should have been occupied and completed by year 1999. However, it was later abandoned and until now there is no plan for rehabilitation. Furthermore, the developer fails to inform MOH the latest development and plan for the rehabilitation of its project⁹⁸.

Stage Four (4): The purchasers obtained vacant possession and entitled to occupy the housing units

To protect the purchasers rights, it is prudent to impose on the new rehabilitating developer the duty to, likewise, observe certain legal and statutory duties, just as the ordinary developer does. The duties and obligations include, for example, the liability to observe defect liability period, obligation to make good any losses suffered by the purchasers, the duty to deliver vacant possession and obtain Certificate of Fitness For Occupation (CF) within the stipulated period of time, failing which damages and

6 MLJ i at xxxiv

compensation are chargeable to the rehabilitating developer and become payable to any aggrieved parties etc. In the ordinary standard format of the sale and purchase agreement, there are progress of development stages and progressive stages payment will follow after completion of certain stage or portion of the development. To strengthen the law, it is suggested that, this procedure should also be improvised, for

example, the new rehabilitating developer could only get progressive stages payment equivalent to 10% progress of development only if they managed to complete the 30% progress of development, payment for 30% progress of development after they had completed the 50% progress of development and so on. These stages of the development completion shall also be verified by architects and engineers of the purchasers, bankers and Housing Controller, not just that sanctioned by the architects and engineers of the rehabilitating developers. This is to ensure credibility, reliability, validity and veracity of the claims, from being manipulated dishonestly or defrauded by the rehabilitating developers and their professional aides and consultants at the expense of the purchasers, and above all to ensure that the interests (their physical houses and loan funds) of the purchasers are fully protected all the time. This 'lien' based method of progressive stages payment, is thought can be introduced, to avoid and hinder the new rehabilitating developer from abandoning again the project and run away. Alternatively, in case, this new rehabilitating developer, calculated or otherwise, terminated the construction of the project, at least duly completed portions of the intended progress of development, as stipulated in the standard format of the sale and purchase agreement, have been achieved and yet the outstanding purchasers' funds available in the hands of end-financiers are still preserved.

Conclusion

This article represents an initial attempt to elaborate the legal phenomena, problems and catastrophes in abandoned housing projects in Malaysia, which, it, by no means, intends to be exhaustive. Frankly speaking, serious study is currently being undertaken and the result and suggestions would hopefully, be brought forward for practical guide to those involved in abandoned housing projects, once the study is completed. By analyzing the legal problems and situations occurring in abandoned housing projects, it is the author's humble hope that certain approaches and in particular legal suggestions, provisions and remedies would be adopted and appropriate actions can be taken to address the problems as well as to facilitate and manage the abandoned housing projects and their rehabilitations in Malaysia.

6 MLJ i at xxxv

1 This society is established under, and has to comply with, the rules and regulations as contained in the Co-operative Society Act (Act 502).

2 See Ministry of Housing and Local Government, Buletin Perangkaan Perumahan 1995 (Housing Statistic Bulletin 1995), p. 12 and Ministry of Housing and Local Government, Buletin Perangkaan Perumahan 2000 (Housing Statistic Bulletin 2000), p 9. The latter is the latest report available.

3 For critical analysis on the meaning of 'housing developer' see **Nuarrual Hilal** Md. Dahlan, Seksyen 3 Akta Pemajuan Perumahan (Kawalan dan Pelesenan) 1966: Suatu Pemerhatian Ke Atas Maksud 'Pemajuan Perumahan' (Bahagian 1 daripada 2), 2003, 6 CLJ i and **Nuarrual Hilal** Md. Dahlan, Seksyen 3 Akta Pemajuan Perumahan (Kawalan dan Pelesenan) 1966: Suatu Pemerhatian Ke Atas Maksud 'Pemajuan Perumahan' (Bahagian 2), 2003, 7 CLJ i.

4 Buletin Perangkaan Perumahan 2000 (Housing Statistic Bulletin 2000), pp 30 and 25.

5 Actually the first legislation was the Housing Developers (Control and Licensing) Act 1966 (Act No 3 of 1966) and its regulations relating to licenses and advertisement. This act had been amended many times and undergone several major changes until the promulgation of the new legislation enforced since December, 2002 (the Housing Development (Control and Licensing) Act 1966). The legislation prior to the current act was the Housing Developers (Control and Licensing) Act 1966 ('the previous act'). By virtue of the amending act - Act A1142 - Housing Developers (Control and Licensing) (Amendment) Act 2002, the previous act and its provisions had been amended and renamed 'the Housing Development (Control and Licensing) Act 1966 - the Act. Likewise, the previous rules - Housing Developers (Control and Licensing) (Licenses and sale and advertisement permits) Regulations 1989 - which mainly concerned the application of licenses and sale and advertisement, had also been amended by the Housing Developers (Control and Licensing) Rules (Amendment) 2002 (P.U.(A) 473) and renamed the 'Housing Development (Control and Licensing) Regulations 1989'. Conversely, the previous Housing Developers (Control and Licensing) (Developer's Account) Rules 1991 is still applicable and subsists and enforced until today. Meanwhile to further consolidate the rules and regulations and then protect the purchasers, the government introduced new rules vide the Housing Development (Purchasers Housing Claim's Tribunal) Regulations 2002 and Housing Development (Compounding of Offences) Regulations 2002. In summary, currently the applicable legislations and rules on the housing industry in West Malaysia, controlling the housing industry are:

a) Housing Development (Control and Licensing) Act 1966 - the parent act;

b) Housing Developers (Control and Licensing) (Housing Development Account) Regulations 1991 - the regulation on the

application and maintenance of the developer's accounts;

c)Housing Development (Tribunal for Homebuyer Claims) Regulations 2002 - the regulations governing the tribunal to hear claims from buyers against the developers;

d)Housing Development (Control and Licensing) Regulations 1989 - concerned with the application for licenses and sale and advertisement permits; and,

e)Housing Development (Compounding of Offences) Regulation 2002 - the regulations which give the power to the enforcement officers of the Ministry of Housing and Local Government to compound certain offences committed by the developers.

6 **Nuarrual Hilal** Md. Dahlan, *Sections 5 and 6 of the Housing Development (Control and Licensing) Act 1966: An Over View*, Unpublished Research Report, School of Management, Universiti Utara Malaysia. 2003, pp. 9-11. See also Ministry of Housing and Local Government, Division of Supervision and Enforcement, *Laporan Senarai Projek Perumahan Terbengkalai Bagi Tahun 2004* (Report of Abandoned Housing Projects List for year 2004), 2004, p 4.

7 **Nuarrual Hilal** Md. Dahlan, *Projek Perumahan Terbengkalai: Fenomena, Masalah dan Penyelesaian - Satu Kajian Ke di Daerah Timur Laut, Pulau Pinang*, Unpublished Master of Law Thesis, 2001, Universiti Kebangsaan Malaysia, p 15.

8 Ibid, p. 20 and **Nuarrual Hilal** Md. Dahlan, *Sections 5 and 6 of the Housing Development (Control and Licensing) Act 1966: An Over View*, Unpublished Research Report, School of Management. Universiti Utara Malaysia, 2003, p 4.

9 Ministry of Housing and Local Government, *Senarai Projek Perumahan Terbengkalai* (List of Abandoned Housing Projects) 1999, 2000, p. 1. Even though there are case law which have reported certain abandoned housing projects, yet, none had ever attempted to define the legal definition of 'abandoned housing project'. See for example *Syarikat Chang Cheng (M) Sdn. Bhd v. Pembangunan Orkid Desa Sdn. Bhd* (1996) 1 MLJ, p. 799, *Soo Hong & Leong Kew Moi & Ors v. United Malayan Banking Corporation Bhd. & Anor* (1997) 1 MLJ, p. 690 and, *Keng Soon Finance Bhd v. MK Retnam Holdings Sdn. Bhd. (Bhagat Singh s/o Surian Singh & Ors, Interveners)* (1996) 2 MLJ, p. 431. Based on preliminary investigation, certain quarters of professionals do indeed suggested some definitions. For example according to the receiver's definition, abandoned housing project is a project which its development and construction had to be terminated. This is either because the developer had faced financial difficulties or the developer concerned terminated the project and absconded from the site of the project for good. See what had been cited by Abdul Halim Sallehuddin, *Pengambil Alih Projek Perumahan Terbengkalai* (The take over of abandoned housing project), Project Paper for Bachelor of Science (survey), Universiti Teknologi MARA, Malaysia, 1991. On part of the planner as well, certain definition of abandoned housing project too, had been suggested. Accordingly, what is meant by abandoned housing project is a project which its development and construction had been deferred. To achieve this definition, the deferment must have been occurred after the pre-requisite approval for development plan had been granted by the authorities, not before it. This approval includes approval and development plans. See Abdul Halim Sallehuddin, *Pengambil Alih Projek Perumahan Terbengkalai* (The take over of abandoned housing project), Project paper for Bachelor of Science (survey), Universiti Teknologi MARA, Malaysia, 1991, p 3. Further, Circular of Malaysian Treasury, also defines that 'an abandoned housing project' is similar to that of the MOH's definition. See: <http://www.treasury.gov.my/index.php?ch=34&pg=119&ac=104&keyword=bil>.

10 Attached to the Insolvency Department under the Prime Minister Department. The function of this officer is to preserve and accumulate the assets and money of the debtors, pending the determination and distribution of the assets and money to secured and unsecured creditors in order to settle off the debts owed by the debtors. See: <http://www.bheuu.gov.my/jim/senaraicawangan.shtml>.

11 Abandoned housing projects in Sabah and Sarawak are not governed by the MOH as they have their own MOH which becomes subject to their respective Housing legislations, not the Housing Development Act 1966. See s 1 of the Act 118.

12 See Ministry of Housing and Local Government, *Laporan Senarai Projek Perumahan Terbengkalai Bagi Tahun 2004*, 2004, p 11.

13 Ibid.

14 Ibid, p 1.

15 See *Zainab bte Mohamed v Syarikat Permodalan Johor (PP) Sdn Bhd* [1998] MLJU 492.

16 See for example - *Taman Suria Mutiara, Jalan Farlim, Pulau Pinang*. Ministry of Housing and Local Government File Number: KPKT/08/2349-2.

17 See for example *Taman Cemerlang, Lebuhraya Thean Teik, Bandar Air Itam Pulau Pinang*. Ministry of Housing and Local Government File Number: KPKT/08/824/7347-I Jld II.

18 See for example, *Taman Villa Fettes, Tanjung Bungah, Pulau Pinang*. Ministry of Housing and Local Government File Number: KPKT/08/824/63 97-01, Jld 2.

19 See for example, Taman Yew Lean, Jalan Embi, Pulau Pinang. Ministry of Housing and Local Government File Number: KPKT/08/824/365.

20 See for example, Taman Batu Bukit, Tanjung Bungah, Pulau Pinang. Ministry of Housing and Local Government File Number: KPKT/08/824/1910-2. See also Zainab bte Mohamed v Syarikat Permodalan Johor (PP) Sdn Bhd [1998] MLJU 492.

21 Ibid.

22 See Rancangan Malaysia Kelapan, 2001-2005, Unit Perancang Ekonomi, Jabatan Perdana Menteri, Putrajaya, Percetakan Nasional Malaysia Berhad, pp 535-536.

23 See **Nuarrual Hilal** Md. Dahlan, Projek Perumahan Terbengkalai: Fenomena, Masalah dan Penyelesaian - Satu Kajian Kes di Daerah Timur Laut, Pulau Pinang, Unpublished Master of Law thesis, Universiti Kebangsaan Malaysia, 2001, p 10.

24 See for example Taman Han Chiang, Jalan Burmah, Pulau Pinang, Taman Shaukat, Jalan P. Ramle, Pulau Pinang, Taman Universe, Jalan Prangin, Pulau Pinang and Taman Tingkat Nusantara, Jalan Bishop, Pulau Pinang. See Ministry of Housing and Local Government, files No.: KPKT/08/824/1913-2.

25 Rodziah Idris, Projek Perumahan Terbengkalai: Sebab, Kesan dan Cadangan Mengatasinya, Latihan Ilmiah, Universiti Malaysia 1990, p 19.

26 Che Rani Muhamad, Projek Perumahan Terbengkalai: Pemulihan dan Pencegahan, EP 998 Project Paper, Diploma Pentadbiran Awam, Fakulti Ekonomi dan Pentadbiran, Universiti Malaya, 1991, p 21.

27 Abdul Halim Sallehuddin, Pengambil Alih Projek Perumahan Terbengkalai, Project Paper, Universiti Teknologi Malaysia, 1991, p 33.

28 Nik Maisarah Nik Omar, Kajian Projek Perumahan Terbengkalai Kajian Kes: Selangor dan Kelantan, Tesis sebagai memenuhi sebahagian dari syarat-syarat untuk Diploma Lanjutan Perancangan Bandar dan Wilayah, Kajian Senibina, Perancangan dan Ukur, Jabatan Perancangan Bandar dan Wilayah, Institut Teknologi MARA, 1993, p 15.

29 Noor Azhar Mohd Asha'ari, Pemuliharaan dan Penilaian Projek Perumahan Terbengkalai Kajian Kes: Wilayah Persekutuan, Jabatan Pengurusan Hartanah, Kajian Senibina Perancangan dan Ukur, Satu Projek Yang disediakan sebagai memenuhi sebahagian daripada syarat untuk penganugerahan Diploma Lanjutan Pengurusan Hartanah, 1993, p 12.

30 Suhaimi Mohd, Projek Terbengkalai: Masalah dan Penyelesaiannya Dalam Negara Masa Kini, Latihan Ilmiah, Universiti Kebangsaan Malaysia, 1992, p 11.

31 Zulfakar Rahmat, Projek Perumahan Terbengkalai Di Malaysia: Masalah dan Penyelesaiannya, Tesis Sarjana, Universiti Malaya, 1994, p 8.

32 **Nuarrual Hilal** Md. Dahlan, Projek Perumahan Terbengkalai: Fenomena, Masalah dan Penyelesaian - Satu Kajian Kes di Daerah Timur Laut, Pulau Pinang, Unpublished Master of Laws Thesis, Universiti Kebangsaan Malaysia, 2001, p. 15, and **Nuarrual Hilal** Md. Dahlan, Sections 5 and 6 of the Housing Development (Control and Licensing) Act 1966, An Over View, Unpublished Research Report, School of Management, Universiti Utara Malaysia, 2003, p 10.

33 Mohd Hamizan Nasir, Projek Perumahan Terbengkalai: Kajian Kes Perumahan Taman Wahida, Maran, Pahang Darul Makmur, Kertas projek ini dikemukakan sebagai memenuhi syarat penganugerahan ijazah sarjana muda sastera, Jabatan Antropologi dan Sosiologi, Fakulti Sastera dan Sains Sosial, Universiti Malaya, 1991, p 23.

34 Ministry of Housing and Local Government, Laporan Senarai Projek Perumahan Terbengkalai bagi Tahun 2004, 2004, p 4.

35 The exercise of administrative power, in imposing certain conditions in consideration of change of status of land, by the state land authority is subject to the principle of reasonableness, fair and just, and no ulterior object involved. See Pengarah Tanah dan Galian Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd [1979] 1 MLJ 135, Land Executive Committee of the Federal Territory v Syarikat Harper Gilfillan Sdn Bhd [1981] 1 MLJ 234 (FC) and Garden City Development Bhd v Collector of Land Revenue, Federal Territory [1982] 2 MLJ 98 (PC). The form of application usually is provided for in the Land Rules of the individual states. For example in Kedah, the provisions contained in the Kedah Land Rules 1966, which were enacted by the State Authority pursuant to s 14 of the NLC. For example, application for sub-division of land and application for variation of conditions are respectively provided in rule 37(1) Item No 5 and rule 37 (1) Item 68 (a)(b)(c)(d). The respective fees payable are as follows - for application for sub-division of land, per title, is RM20 per sub-divided plot to be issued with title - subject to a minimum fee of RM100 by using form 9A and the fees for the application for variation of conditions is RM50.

36 Interview with Mr. Tomadan Johari, Deputy Secretary General (Development), MOH, Pusat Bandar Damansara, on 22 December 2005.

37 Ibid.

38 Ibid.

39 Application for strata titles is provided in s 7 (proprietor of alienated land may apply for sub-division of a building), s 8 (circumstances in which it is compulsory for a proprietor to apply for sub-division of a building), section 9 (conditions for approval) and s 10 (application for sub-division of building) of the Strata Titles Act 1985 (Act 318). The application is effected by filling and submitting Form 1 (First Schedule) to the Land Administrator subject to certain payments and other conditions as provided in s 10.

40 This is a document evidencing the beneficial interest of the purchaser on and over such particular purchased parcel stipulating that the ownership would be completely transferred to him once he had paid the price, loan advances by the banks and had complied with all the conditions of the sale. This is a means recognized in English rules of equity. The concession and permission to apply English rules of equity in Malaysia is well entrenched in section 3 (1) of the Civil Law Act 1956. The application is subject to the availability of the Malaysian written law, in particular the NLC's provisions. See Haji Abdul Rahman & Anor v Mahomed Hassan [1917] (AC) 209, United Malayan Banking Corporation Berhad & Anor v Pemungut Hasil Tanah, Kota Tinggi [1984] 2 MLJ 87, Pemungut Hasil Tanah, Kota Tinggi v United Malayan Banking Corporation Berhad [1981] 2 MLJ 264, Holee Holdings (M) Sdn. Bhd v Chai Him [1997] 4 MLJ 601. See also, Andrew Phang Boon Leong, Cheshire, Fifoot and Furmston's Law of Contract, Second Singapore and Malaysian Edition, Butterworths Asia, 1998, Singapore, p. 44 and Teo Keang Sood and Khaw Lake Tee, Land Law In Malaysia - Cases and Commentary, Singapore Butterworth, 1987, pp 10-11. It should be noted that, the application of English law including the rules of equity is subject to the availability of written law in Malaysia and that the importation of these laws are only that being the English laws as at and that of prior to the 7 April 1956. However, it is dismal to note that courts in Malaysia still rigorously apply English common law and rules of equity decided in England even after the mandatory date line - 7 April 1956. See argument concerning this issue in **Nuarrual Hilal** Md. Dahlan, Doctrine of Laches in action founded on Contract in Malaysia, Malayan Law Journal, Article Supplement (2002) 2 MLJ xlix-cxxvii, May 2002 PP 8053/8/2002; MITA (P) 150/2/2000, **Nuarrual Hilal** Md Dahlan & Hairuddin Megat Latif, Wakaf: Conflict of Jurisdiction Between Civil and Syariah Courts In Malaysia, Current Law Journal (CLJ) August Part 1 (2003) 3 CLJ 289-348, **Nuarrual Hilal** Md Dahlan, Pembuangan Konstruktif di Malaysia (Constructive Dismissal in Malaysia), KANUN -- JURNAL UNDANG-UNDANG MALAYSIA, 17 June 2005, Dewan Bahasa dan Pustaka, 2005, Kuala Lumpur, pp 1-57 and **Nuarrual Hilal** Md. Dahlan, Limitation Period of Action For Specific Performance in the Sale and Purchase of Land, (2004) 12 IUMLJ, p 135.

41 File number: KPKT/08/824/2605.

42 See also Majlis Perbandaran Pulau Pinang v Tropiland Sdn Bhd [1996] 3 MLJ 94.

43 Ibid.

44 File Number: KPKT/08/824/7347-I Jld II.

45 File Number: KPKT/08/824/63 97-1, Jld 2 and KPKT/BL/19/6397-I.

46 See: <http://aplikasi.kpkt.gov.my/akhbar.nsf/8521d968204e8b454825697400224ca6/3e4e3dd045193bc648256e9e000b5bd6?OpenDocument>.

47 Ibid.

48 Ibid.

49 Hunud Abia Kadouf & Ainul Jaria Maidin, Theory and Practice in Land Use Planning in Malaysia, IIUM Law Journal, Vol 12, No 1, 2004, p 40.

50 Ibid.

51 Ibid.

52 Ibid.

53 File Number: KPKT/08/824/365.

54 File Number: KPKT/08/824/2200 Jld. II.

55 File Number: KPKT/08/824/365.

56 File Number: 340/D/(547)/E and KPKT/BL/19/547-2.

57 File Number: KPKT/08/824/2605.

58 File Number: KPKT/08/2349-2.

59 ROCE means return on capital employed. ROCE relates to the overall profitability of a company to the finance used to generate profit and links net profit margin, net asset turnover and gross profit margin. See Watson, D and Head, A. Corporate Finance, Principles and Practice, Second Edition, Prentice Hall, 2001, London.

60 NPM is Net Profit Margin. This is one of the ratios to determine return of capital. This ratio, which is also called operating profit margin, indicates the efficiency with which costs have been controlled in the generation of profit from sales. See Watson, D and Head, A. Corporate Finance, Principles and Practice, Second Edition, Prentice Hall, 2001, London.

61 Gearing ratio reflects how a company is financed with respect to debt and equity and are used to assess the various risks. The purpose of this ratio is to indicate the proportion of debt finance employed by a company. See Watson, D and Head, A. Corporate Finance, Principles and Practice, Second Edition, Prentice Hall, 2001, London.

62 File number: KPKT/08/2349-2.

63 File number: KPKT/08/824/63 97-1, Jld 2 and KPKT/BL/10/6397-I.

64 File number: KPKT/08/824/.../337 Jilid II.

65 File number: KPKT/08/824/365.

66 File number: KPKT/08/3013/E.

67 This fact has been confirmed via interview with Mr. Tomadan Johari, Deputy Secretary General (Development), MOH, Pusat Bandar Damansara, on 22 December 2005.

68 See also Allan Bryan v Judith Anne Maloney [1995] 2 CLJ 503. In this Australian case, the majority judgment of the High Court held that a professional builder was liable for damage to the house which was purchased by a subsequent purchasers. The defect, which occurred subsequent to the completion of the sub-sale, was due to inadequacy of the footings of the houses which could not subsequently withstand the seasonal changes in the clay soils.

69 For example Eastern Enterprise Sdn. Bhd (Taman Suria Mutiara). See File Number: KPKT/08/2349-2.

70 For example Gewaris Sdn. Bhd (Taman Villa Fettes). See File Number: KPKT/08/824/63 97-1, Jld 2 and KPKT/BL/19/6397-I.

71 For example Penangan Maju Holdings Sdn. Bhd (Taman Cemerlang). See File Number: KPKT/08/824/7374-I Jld II.

72 See for example Taman Rasa Sayang, Jempol Negeri Sembilan, developed by Winlord Enterprise Sdn. Bhd. File Number: KPKT/08/824/3361-1.

73 See for example Taman Budi, Daerah Marang, Terengganu, developed by Bina Budi Sdn. Bhd. File Number: KPKT/08/824/1247/E.

74 See for example Perkampungan Bayu, Beserah, Kuantan, developed by Bayu Titiwangsa Sdn. Bhd (In Liquidation). File Number: KPKT/08/824/2886/E.

75 Interview with Mr. Tomadan Johari, Deputy Secretary General (Development), MOH, Pusat Bandar Damansara, on 22 December 2005. See also **Nuarrual Hilal** Md. Dahlan, Projek Perumahan Terbengkalai: Fenomena, Masalah dan Penyelesaian - Satu Kajian Ke di Daerah Timur Laut, Pulau Pinang, Unpublished Master of Law Thesis, 2001, Universiti Kebangsaan Malaysia, pp 20-22.

76 See Credit Corp (M) Bhd v Hasmah bte Salleh & Ors [2004] 4 MLJ 550, Pilecon Engineering Bhd v Remaja Jaya Sdn Bhd [1997] 1 MLJ 808; [1996] 1 LNS 105, Loh Hoon Loi & Ors v Viewpoint Properties (Sabah) Sdn Bhd [1995] 4 MLJ 804, Kang Yoon Mook Xavier v Insun Development Sdn Bhd [1995] 2 MLJ 91, Syarikat Chang Cheng (M) Sdn. Bhd. v Pembangunan Orkid Desa Sdn Bhd [1996] 1 MLJ, 799, and Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd)Bhagat Singh s/o Surian Singh & Ors, Interveners) [1996] 2 MLJ 431.

77 Provided in cl 23(1) of Schedule G, Housing Development (Control and Licensing) Regulation 1989 -- Sale and Purchase Agreement (Land and Building).

78 Provided in cl 26(1) of Schedule H, Housing Development (Control and Licensing) Regulation 1989 -- Sale and Purchase Agreement (Building Intended For Sub-division).

79 If the developer(vendor) fails to deliver vacant possession of the said parcel within this stipulated period, they shall be liable to pay the purchaser liquidated damages calculated from day to day at the rate of ten per centum (10%) per annum of the purchase price from the expiry date of delivery of vacant possession until the date of the purchaser takes vacant possession of the said parcel. See cl 26(2) of Schedule H, Housing Development (Control and Licensing) Regulation 1989 -- Sale and

Purchase Agreement (Building Intended For Sub-division and cl 23(2) of Schedule G, Housing Development (Control and Licensing) Regulation 1989 -- Sale and Purchase Agreement (Land and Building).

80 Interview with Mr Tomadan Johari, Deputy Secretary General (Development), MOH, Pusat Bandar Damansara, on 22 December 2005. See also **Nuarrual Hilal** Md. Dahlan, Projek Perumahan Terbengkalai: Fenomena, Masalah dan Penyelesaian - Satu Kajian di Daerah Timur Laut, Pulau Pinang, Unpublished Master of Law Thesis, 2001, Universiti Kebangsaan Malaysia, pp 20-22.

81 See for example Taman Han Chiang, Lot 2343, PB6, NED, Penang (Lam Chew Development Sdn. Bhd), File Number: 340/D/(547)/E and KPKT/BL/19/547-2.

82 For example Taman Showkat, Lot 2219, Mukim 13, NED, Penang (Showkat Industry & Realty Sdn Bhd). See File Number: KPKT/08/824/.../337 Jilid II.

83 Ibid.

84 See for example Taman Yew Lean, Lot Number 664, Section 2, NED, Penang. (Yew Lean Development Sdn. Bhd). File Number: KPKT/08/824/365.

85 File Number: KPKT/08/824/.../337 Jilid II.

86 File Number: KPKT/BL/19/1171-I Jilid II.

87 File Number: KPKT/08/824/3957/E.

88 Ibid.

89 File Number: KPKT/08/824/2200 Jilid II.

90 It is suggested that these suggestions should be considered by the government especially through its machineries, for example, the National Physical Planning Council, the Ministry of Housing and Local Government ('MOH'), land authorities, state authorities, State Planning Committees, Regional Planning Committees and local planning authorities when adopting policies and guidelines, as well as when executing them, in the course of carrying out the housing policies. The Town and Country Planning Act 1976 (Act 172) could be invoked, apart from Act 118, to employ the suggestions, as the basis to strengthen the current policies and guidelines relating to housing development and its policies. These suggestions, it is submitted, would also in line with the spirit of the Town and Country Planning Act 1976 (Act 172), which states, inter alia, under its Long Title and Preamble, '...for the purpose of ensuring uniformity of law and policy to make a law for the proper control and regulation of town and country planning in Peninsular Malaysia'.

91 See also s 11(1)(d) of Act 118, where the Minister could invoke this provision in order to certify that a particular housing developer has abandoned the project. See also s 7 (g) of Act 118, where the housing developer is imposed, a statutory duty, by this section to inform immediately the Housing Controller that he is unable to meet his obligations to the purchasers at any stage of the housing development before the issuance of the certificate of fitness (CF). It is submitted that, this 'inability' also would include when the project is abandoned.

92 This is also in line with s 11 of Act 118, where the Minister may in certain circumstances direct the unfit developer to take such certain necessary step, which it is submitted to include when the project is abandoned, in order to protect the rights and interests of the purchasers. These steps may include to let certain company to assume control of the project, with the consent of the Minister of Finance and to declare that the instant housing development carried out by that particular unfit developer is abandoned. See s 11 of the Act 118.

93 File Number: KPKT/08/824/658-1.

94 File Number: KPKT/08/824/6741-2.

95 File Number: KPKT/08/824/4756.

96 File Number: KPKT/08/824/3957/E.

97 File Number: KPKT/08/824/7055-1.

98 File Number: KPKT/08/824/7090-1.